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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,469	07/23/2003	Iftikhar Khan		1468
27572 7590 11/13/2007 HARNESS, DICKY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			EXAMINER STIGELL, THEODORE J	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 11/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

CT

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/604,469		KHAN, IFTIKHAR	
	<b>Examiner</b>		<b>Art Unit</b>	
	Theodore J. Stigell		3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10,13,14 and 16-29 is/are pending in the application.
- 4a) Of the above claim(s) 18-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10,13,14,16 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- ☐ Claim(s) \_\_\_\_\_

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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**DETAILED ACTION**

***Response to Amendment***

***Election/Restrictions***

Applicant's election with traverse of claims 10, 13-13, and 16-17 in the reply filed on 5/14/2007 is acknowledged. The traversal is on the ground(s) that the system of claim 1 is required for the operation of the method of claim 18. This is not found persuasive because the structure defined in claim 10 is not the same structure defined in claim 18. Furthermore, the structure defined in claim 10 can be used in a materially different process such as suctioning the mouth or a wound in the body.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 112***

The 35 U.S.C. 112 rejection has been withdrawn in light of the applicant's remarks filed 9/13/2007. The examiner notes that the applicant has now admitted on the record that the limitation of a "length sufficient to engage the oropharynx and distal bronchi" is an obvious design consideration well within the skill of an ordinary artisan.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 10, 13-14, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pell et al. (4,850,348) in view of Wood (GB 2,220,357). Pell discloses most of the limitations recited by the applicant. Pell does not specifically teach to include a reservoir comprising an entry compartment and a second compartment, wherein a grid operable to prevent obstruction of the vacuum by the obstructive material separates the compartments. Instead, Pell discloses a standard suction source (column 5, line 33). The examiner notes that the applicant has disclosed (see claims 12/14/2006) that the suction system can be used with a standard suction system. In the rejection of this claim set (see final rejection mailed 2/12/2007), the examiner noted this disclosure and made it part of the record that no patentable weight was being given to the reservoir. The applicant has never traversed this point. It is clear that the system would work just as well with a standard suction canister as it would with the claimed reservoir.

Wood discloses a suction catheter system that is designed to "remove blood, irrigation liquid, tissue debris and the like" during a surgical procedure. Wood discloses a suction catheter (11) connected to a reservoir (1) comprising an entry compartment

(see claim

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(10) and a second compartment (20) separated by a grid (41) that is operable to prevent liquid or debris from entering the vacuum source (21). Wood further discloses a removable disc (18) to remove the suctioned material from the reservoir.

It would have been obvious to one of ordinary skill in the art at the time of the invention modify the system of Pell with the suction reservoir (1) and grid (41) of Wood to make a suction system that would prevent the obstruction of the vacuum source and thus ensure continuous suction.

Claims 10, 13-14, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joseph (5,819,723) in view of Wood (GB 2,220,357). Joseph discloses most of the limitations recited by the applicant. Joseph does not specifically teach to include a reservoir comprising an entry compartment and a second compartment, wherein a grid operable to prevent obstruction of the vacuum by the obstructive material separates the compartments. Instead, Joseph discloses a standard suction source (402).

Wood discloses a suction catheter system that is designed to "remove blood, irrigation liquid, tissue debris and the like" during a surgical procedure. Wood discloses a suction catheter (11) connected to a reservoir (1) comprising an entry compartment (10) and a second compartment (20) separated by a grid (41) that is operable to prevent liquid or debris from entering the vacuum source (21). Wood further discloses a removable disc (18) to remove the suctioned material from the reservoir.

It would have been obvious to one of ordinary skill in the art at the time of the invention modify the system of Joseph with the suction reservoir (1) and grid (41) of Wood to prevent obstruction of the vacuum source.

suction source

discloses

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Wood to make a suction system that would prevent the obstruction of the vacuum source and thus ensure continuous suction.

***Response to Arguments***

Applicant's arguments with respect to claims 10, 13-14, and 16-17 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Stigell whose telephone number is 571-272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Inf.

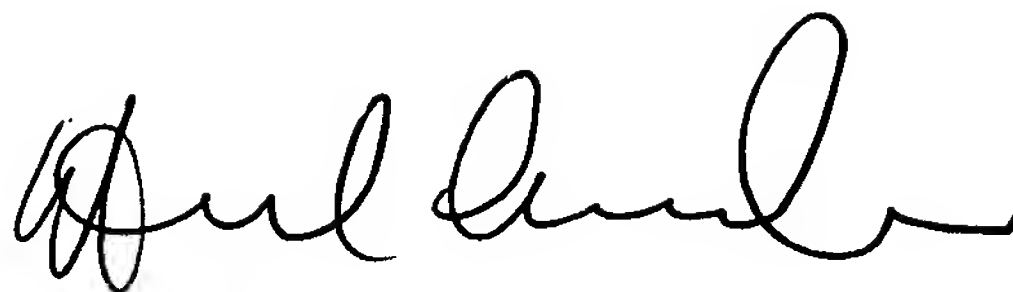
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Theodore J. Stigell



NICHOLAS D. LUCCHESI  
SUPERVISORY PATENT EXAMINER  
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Application  
No. 10/604,469

Theodore